

Department of Homeland Security: Options for House and Senate Committee Organization

August 13, 2004

Congressional Research Service

<https://crsreports.congress.gov>

RS21360

Summary

The 9/11 Commission Report recommended that the House and Senate each have a “permanent standing committee” as the principal committee for conducting oversight and review for homeland security. Earlier, pursuant to PL 107-296, the Homeland Security Act, a new Department of Homeland Security was established. Congress began discussions regarding the appropriate congressional structure to conduct oversight and fund the new department. Section 1503 of the legislation states the sense of Congress that each chamber should review its committee structure in light of the reorganization of the executive branch, and the House, in the 108th Congress, established a Select Committee on Homeland Security with a mandate to report recommendations for changes in the House committee system by September 30, 2004.

Each chamber might decide to retain its current structure, make minor alterations to its current jurisdictional alignment, make extensive jurisdictional changes, create a standing committee, re-establish the existing House select committee, or establish one or more new select committees with revised authorities. Further changes might also be made in the structure of the Appropriations Committees. This report addresses some of these options and will be updated as events warrant.

Overview

Since the terrorist attacks of 2001 and the creation of the new Department of Homeland Security, there has been widespread interest in reorganizing the House and Senate committee systems to handle homeland security issues more effectively. Some changes to the committee systems have already been made, but there are calls for still more comprehensive action.

Recommendations of the 9/11 Commission . Among the many issues discussed in the report of the commission were a group of recommendations intended to “strengthen congressional oversight of intelligence and homeland security.” Concerning homeland security, the commission recommended establishment of a standing committee in each chamber to assume responsibility over the topic.

Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.¹

Two House Homeland Security Committees . The House created a temporary Select Committee on Homeland Security that was directed to coordinate recommendations on the bill made by a half dozen different House standing committees. The Homeland Security Committee compiled a comprehensive proposal, led House floor debate on the bill, and served as the central negotiating team in resolving differences between the House and Senate versions of the bill. When P.L. 107-296 was signed into law, the Select Committee on Homeland Security was abolished, but not before the new law included language in Section 1503 stating, “It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.”

The House deferred immediate action, creating in January 2003, a new Select Committee on Homeland Security. This new committee was to serve during the 108th Congress as the House focus for legislative and oversight coordination for homeland security issues, while other House committees retained their more limited legislative and oversight authority over homeland security. Most significantly, the Select Committee was directed to report by September 30, 2004, its recommendations for changes in the House committee system. By comparison, the Senate, in the 108th Congress, has continued to consider homeland security issues within its existing committee structure.

Appropriations Subcommittee for Homeland Security . The structure of the House and Senate Appropriations Committees have been changed to account for the creation of the new department. In early February 2003, the House Appropriations Committee approved an internal reorganization plan which abolished the former Subcommittee on Treasury and Postal Service Appropriations and transferred its responsibilities to a renamed Subcommittee on Transportation, Treasury, and Independent Agencies Appropriations. With this consolidation, a new thirteenth Subcommittee on Homeland Security was established and it was assigned jurisdiction over appropriations for the new department and for bureaus in other departments transferred to it. The Senate Appropriations Committee shortly thereafter followed suit, to ensure that the subcommittee structures of the two committees were parallel.

¹ *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks on the United States*, p. 421, <http://www.gpoaccess.gov/911/index.html>, visited Aug. 12, 2004.

Calls for Further Change . Many Members have already endorsed further changes to the committee system. A number of proposals have been offered in the House and Senate to establish a new temporary select, permanent select, or standing committee on homeland security, to alter the appropriations process, or to make other changes in congressional structures dealing with homeland security issues. A senior House leader observed in 2002 that creation of the new department “probably will require at least a reorganization of the current committees.” A Senator active in crafting the final version of the Homeland Security Department bill stated “It is hard to see how Congress could do a decent job of authorizing and overseeing what the new department does without a new Committee of Homeland Security.” On the other hand, a number of Members have publicly opposed any alteration of House or Senate committee structures, while others have endorsed or opposed such action at different times.² From the perspective of the executive branch, a reduction in committee jurisdiction fragmentation limits the number of panels to which officials of the new agency will be answerable.

Although the House and Senate have undertaken some initial steps to revise their committee structures, the report of the 9/11 Commission may add additional pressure for congressional action. This report examines various options for the House and Senate individually or jointly to consider in reorganizing its structures dealing with homeland security and discusses possible advantages and disadvantages of each.

Options for Congressional Organization³

Timetable for Reform . Not only is there discussion about what changes should be made in congressional structures, but there is also discussion about when such changes should be made. With the 9/11 Commission’s recent recommendations and the September 30, 2004, deadline for committee system reform proposals from the House Homeland Security Committee, some say reforms are so vital that they should be adopted before Congress adjourns for the election. These advocates can point to the 1974 House committee reforms which were passed just before the elections that year.

Other say it would be best to defer such action until the beginning of the new Congress in January. After the election, the voters will have supplied fresh mandates and the House and Senate will have time in January before the inauguration to consider more comprehensive reform options thoroughly. The House adopts its rules for the new Congress on the first session day, and these reforms could include substantial changes to its committee structure. The Senate’s rules are deemed to be in place automatically at the beginning of a new Congress. However, some believe there will be attempts on the first day of the new Congress to change the Senate’s Cloture Rule and other rules relating to the consideration of executive nominations. These efforts could open the door to consideration of committee system changes as well.

Retain Current Structure . Congress could decide that the current system is sufficient to monitor the work of the new department. No changes would be made in either jurisdiction or referral procedures. Some may argue that it is too soon to know how much legislative workload the new department will cause House and Senate committees. In the immediate aftermath of the 2001 terrorist attacks, all congressional committees sought involvement in terrorism matters.

² For a broader review of reported Member views on reorganization options, see David Nather and Karen Foerstel, “Proposal Presages Turf War,” *CQ Weekly*, June 8, 2002, p. 1505; David Nather and Karen Foerstel, “Committee Chairmen Express Concerns about Major Shift in Jurisdiction,” *CQ Weekly*, June 15, 2002, p. 1584; James Kitfield, “The Experiment Begins,” *National Journal*, June 15, 2002, p. 1776; and Derek Willis, “Turf Battles Could Lie Ahead in Fight to Oversee Homeland Security Department,” *CQ Weekly*, Nov. 16, 2002, p. 3006.

³ For additional information, see CRS Report RS21643, *House Committee System: Jurisdiction and Referral Reform Options*, by Judy Schneider and Paul Rundquist.

More recently, the involvement of committees with only minor claims to jurisdiction seems to have tapered off.

Historically, there has been no necessary connection between an executive reorganization and congressional committee reorganization. Several House and Senate committees were combined to create the new Armed Services Committees in 1947, at about the same time that the Department of Defense was created. The Armed Services Committees promptly created subcommittees that closely matched the former standing committees that had been merged in the committee reorganization. On the other hand, the Department of Energy was created after the Senate had consolidated energy jurisdiction in its committees, but before the House completed a realignment of its energy jurisdictions in 1980. The creation of the Department of Health, Education, and Welfare (now Health and Human Services) was not accompanied by any change in House or Senate committee jurisdictions.

Reorganize Entire System . Either chamber or both chambers, acting separately or jointly, could undertake an extensive reorganization of the committee system. A substantial House committee reorganization took place in 1995, but it has been a quarter century since the Senate comprehensively reorganized its committees. The Joint Committee on the Organization of Congress in the 103rd Congress considered numerous options for such reorganization, but did not directly address the issue of terrorism or anti-terrorism jurisdiction.⁴ A comprehensive reorganization could allow both chambers to address other jurisdiction issues which have emerged in recent years.⁵ Nevertheless, a comprehensive reorganization is normally controversial and rarely contemplated under very short deadlines.

Realign Committee Jurisdiction . Within the existing system, either or both chambers could choose to realign their committee jurisdictions within the existing structure. That would entail changing chamber rules. Past experience indicates that Members generally have been loathe to overhaul the committee system, especially during a Congress. Rules changes are traditionally adopted at the beginning of a new Congress. In the Senate, because there is no need to readopt Senate rules at the beginning of a new Congress, a committee reorganization would have to be considered separately.

In either chamber, it would be possible to add jurisdictional aspects of certain homeland security topics to the jurisdiction of specific committees, without altering the existing subject jurisdictions of committees over other topics. For example, jurisdiction over “national energy policy generally” was assigned to the House Energy and Commerce Committee in 1980 without significant alteration to other committees’ jurisdictions.

Change Referral System . Both chambers typically refer measures to a single committee, by determining primary jurisdiction in the House and predominant jurisdiction in the Senate. In the House, most multiple referrals are sequential, although joint referrals were permitted until 1995. Changing the referral system could enable all interested committees to maintain legislative and oversight jurisdiction. For example, the Speaker of the House (who has the discretionary

⁴ Joint Committee on the Organization of Congress, *Background Materials: Supplemental Information Provided to Members of the Joint Committee on the Organization of Congress*. 103rd Cong., 1st sess. (Washington: GPO, 1993) pp. 608-788. See also, CRS Report RL31835 *Reorganization of the House of Representatives: Modern Reform Efforts*, by Judy Schneider, Colton Campbell, Christopher Davis, and Betsy Palmer; and CRS Report RL32112, *Reorganization of the Senate: Modern Reform Efforts*, by Judy Schneider, Christopher Davis, and Betsy Palmer.

⁵ Such restructuring would enable the chambers to also address other committee jurisdiction and organization issues. For example, press reports have indicated the possibility of re-creating a House Committee on Merchant Marine and Fisheries. See, Ben Pershing, “Cubin Joins Chase for Resources,” *Roll Call*, Apr. 25, 2002, p. 1. In addition, because of the shifting majority in the Senate, most Senators now hold more committee and subcommittee assignments than the rules permit.

authority to impose time limits on referrals) could be required to impose one on all committees involved in a multiple referral of a homeland security-related bill. In addition, for legislation on homeland security, the House could allow joint referrals. (In the 108th Congress, House rules allow referral without designation of a primary committee “under exceptional circumstances.”)

In the Senate, which generally requires unanimous consent for multiple referrals, party leaders could invoke their little-used authority to recommend referrals to several committees by debate-limited motion. However, major changes in House or Senate bill referral rules could complicate action on homeland security matters and could be nearly as controversial as a jurisdictional realignment.

Create New Standing Committee over Homeland Security . A new standing committee could be created in either or both chambers. Such a panel could have legislative responsibility over all aspects of the Department of Homeland Security. Questions regarding whether the new committee would absorb jurisdiction from existing panels or overlap with them would need to be decided. Would special oversight authority (broader in scope than the committee’s legislative jurisdiction) be granted to it?

Create Select Committee over Homeland Security . The House has created two temporary select committees to deal with homeland security in the wake of the 2001 attacks. A select committee with the same or a revised jurisdiction could be established in the 109th Congress, with or without the creation of a companion select committee in the Senate. If such a new panel were created, would it have legislative authority (for example, in the same manner as do the current intelligence select committees)? If it were limited to conducting oversight, how and through what process would its findings be converted into legislative recommendations? In view of the recommendations of the 9/11 Commission about the House and Senate Permanent Select Committees on Intelligence, will the views of the House and Senate about creating such select committees on other subjects change?

Create a Joint Committee on Homeland Security . The House and Senate could create a joint committee to oversee the work of the new department. However, only one joint committee in the last half-century has been granted legislative jurisdiction. If such a joint panel were created, the question of sequential referrals to existing standing committees could still be raised. The House and Senate acted separately in the 107th Congress to permit the two intelligence committees to hold an inquiry into intelligence failures prior to the terrorist attacks. Nothing in House or Senate rules would preclude existing House or Senate committees from holding joint hearings in the interests of greater efficiency. Some view joint committees as a means to permit more efficient congressional review of policy areas, while others believe that separate committees help preserve chamber autonomy and encourage independent committee initiatives.

Create Leadership Committee . A small committee comprised of members named by chamber party leaders could act to coordinate homeland security legislative and oversight work among other committees in the chamber. The 107th Congress House Homeland Security Select Committee was just such a leadership panel, and a similarly constituted panel could be reestablished on a more permanent basis.⁶

Use less Formal Means to Coordinate Policy . In both the House and Senate, many committees claiming responsibility for specific policy areas have entered into “memoranda of understanding,” or agreements among the concerned committees, reflecting each panel’s

⁶ Such action is not unprecedented. The House decided in 1977 to extend the life of the Ad Hoc Committee on the Outer Continental Shelf for an additional period to allow it to monitor the implementation of the law, the consideration of which had caused its initial creation.

appropriate jurisdiction over a disputed policy area. These memoranda serve as guidance to the parliamentarians' offices in making bill referrals and may obviate the immediate need for a formal revision in committee jurisdictions.

The Senate also makes use of "temporary standing orders," unanimous consent agreements typically in force for the current Congress only, that modify the standing rules of the Senate. One or more temporary standing orders could be used to allocate jurisdiction among Senate committees over homeland security issues, subject to renewal or modification at the beginning of each succeeding Congress. If successful, the temporary orders could be converted into more permanent changes in Senate procedure; if not, other realignments could be attempted.

Further Realign Appropriations Committees' Subcommittees . The House and Senate Appropriations Committees adapted their structures in 2003 to create a new Subcommittee on Homeland Security.⁷ Additional recommendations by the 9/11 Commission include a proposal to set out intelligence appropriations in a separate appropriations bill, or to combine authorization and appropriations for intelligence activities in only one panel in each chamber. Additional changes may be required in the Appropriations Committees' structures and the procedures through which they draft both regular and supplemental appropriations bills.

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⁷ For further information, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2003*, by James V. Saturno.